

Attachment # 6  
Page 1 of 8STATE OF FLORIDA  
DEPARTMENT OF STATEJEB BUSH  
GovernorSUE M. COBB  
Secretary of StateFebruary 2, 2006  
Certified Mail Return ReceiptThe Honorable Ion V. Sancho  
Supervisor of Elections for Leon County  
315 South Calhoun Street, Suite 100  
Tallahassee, FL 32301

Dear Mr. Sancho:

On January 13, 2006, the Department of State received written notice from you that Leon County failed to comply with the terms of the "Memorandum of Agreement For Receipt And Use Of Voting Systems Assistance Grant" entered between you and the department and executed by you on October 18, 2004 (Attachment "A"). This letter serves as a demand for the immediate return of the Title II HAVA (Help America Vote Act) funds provided to you under the terms of that agreement.

In November 2004, you received \$564,421.95 in Title II HAVA funds from the Department pursuant to the agreement to assist you with the purchase of a certified voting system that would meet the federal standards for voting systems accessibility by January 1, 2006, under section 301(a) of Title III of HAVA. This amount was based on a certification that you had provided on August 10, 2004, in which you stated a need for 125 HAVA compliant voting machines to satisfy the federal requirement that there be at least one accessible voting system in each polling place. See Attachment "B."

It is important to note that certified accessible voting system options, the purchase of which would have brought your county into compliance, were available to you well in advance of the deadline set forth in the agreement. For example, by letter dated March 17, 2005, the Division of Elections' Bureau of Voting Systems Certification informed you directly of those options. See Attachment "C."

Under the terms of the agreement, you must return to the Department all the Title II HAVA funds you received due to failure to comply with the accessibility requirements of section 301(a) of Title III by January 1, 2006. Please remit to the Department of State the Title II HAVA funds totaling \$564,421.95 no later than Thursday, February 16, 2006, 5 p.m.

We recognize that the consequence of your failure to comply with the terms of the agreement places Leon County in a financial predicament. However, the specific legislative appropriation 28711 of the 2004-05 Appropriations Act (s. 6 of chapter 2004-268, Laws of Florida) upon which

Office of the Secretary  
R. A. Gray Building • 500 South Bronough Street • Tallahassee, Florida 32399-0250  
Telephone: (850) 245-6500 • Facsimile: (850) 245-6125 • <http://www.dos.state.fl.us>

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Letter to The Honorable Ioni Sanchez  
Date: February 2, 2006  
Page 2 of 2

Attachment# 1  
Page 2 of 8

the agreement was based is unambiguous and does not provide for the funds to be encumbered after January 1, 2006. We will make every effort to seek legislative re-appropriation of these Title II HAVA funds to assist you with the purchase of accessible voting systems in compliance with federal law. However, the Department does not dictate or predict the terms and conditions under which funds may be re-appropriated.

In the interim, please recognize that a failure to have your county's voting system accessible to the disabled if it is used in any federal election held after January 1, 2006, would be in violation of section 301(a) of Title III of HAVA. Under Title IV of HAVA, the Department of Justice is responsible for enforcing HAVA which it may do by seeking declaratory and injunctive relief.

Such a failure to have your county's voting system accessible to the disabled if it is used in any federal election held after July 1, 2005, would also be in violation of section 101.56062, Florida Statutes. The Department of State has new authority pursuant to section 97.012(14), Florida Statutes (effective January 1, 2006), to enforce compliance by a county supervisor of elections or any official performing duties with respect to chapter 97-102 and chapter 105 of the Florida Election Code or with a rule of the department. Therefore, if Leon County fails to prepare for and meet state accessibility standards for voting systems used in any federal election, the department will have to consider exercising the enforcement authority authorized by section 97.012(14), Florida Statutes. If timely and appropriate actions are taken to ensure procurement of an accessible voting system, poll worker training, and voter education activities, such enforcement action by the State may not be necessary.

Please provide to Dawn K. Roberts, Director of the Division of Elections, by Thursday, February 16, 2006, 5 p.m., a detailed, written plan, including a timeline, of the actions you intend to take to ensure that an accessible voting system will be in place and ready for use in your county's next election for federal office in accordance with the requirements of federal and state law.

Respectfully,

*Sam W. Cobb*

Secretary of State

Attachments

Cc: Bill Proctor, Chair, Board of County Commissioners  
Herbert W.A. Thiele, County Attorney  
Dawn K. Roberts, Director, Division of Elections

SMC/mim

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DIVISION OF ELECTIONS

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PAGE 04/09

P.06

**FILE COPY**

Attachment #

Page

3

of

2

**MEMORANDUM OF AGREEMENT FOR RECEIPT AND USE OF  
VOTING SYSTEMS ASSISTANCE GRANT**

18th

This agreement, effective as of the 1st day of October, 2004, is by and between the State of Florida, Department of State, Division of Elections ("Department"), an agency of the State of Florida, the address of which is The R.A. Gray Building, 500 South Bronough Street, Room 316, Tallahassee, FL 32399-0250 and Leon County Supervisor of Elections Ion V. Sancho ("Supervisor"), 301 South Monroe Street, Suite 301, Tallahassee, Florida 32301.

**I. Governing Law**

Pursuant to Specific Appropriation 2871I of the 2004-2005 General Appropriations Act, s. 6 of chapter 2004-268, Laws of Florida, the Department of State shall disburse funds appropriated to it from the Grants and Donations Trust Fund to the county supervisors of elections to assist in the purchase of accessible voting systems. The Department is authorized to distribute a total of eleven million six hundred thousand dollars (\$11,600,000) in the state fiscal year 2004-2005 for the purpose outlined under the specific appropriation.

Specifically, the appropriation allows for the purchase of Direct Recording Equipment (DRE) or other state approved equipment that meets the standards for accessibility for persons with disabilities by ensuring that each county has one accessible voting system for each polling place. This specific appropriation is also to ensure compliance with the accessibility requirements of Section 301(a)(3) Title III of the Help America Vote Act (HAVA) which is effective January 1, 2006. In addition to the federal law, Section 101.56062, Florida Statutes, requires accessible voting systems effective July 1, 2005.

**II. Disbursement**

The Supervisor under this agreement shall receive the amount specified in Attachment A for the respective county for the purpose outlined in Specific Appropriation 2871I.

**III. Certification**

The Supervisor shall not receive funds pursuant to Section II until the Supervisor submits to the Department a completed Certificate of 2004 Voting Systems Assistance Grants which certifies the information required by Specific Appropriation 2871I.

**IV. Restrictions**

The Supervisor under this agreement may only use funds received for purposes outlined in Specific Appropriation 2871I of the 2004-2005 General Appropriations Act and

JAN-23-2006 11:32

DIVISION OF ELECTIONS

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P. 87

Attachment # 1  
Page 7 of 8

consistent with the provisions of HAVA. If the county is not in compliance with the accessibility requirements in HAVA by January 1, 2006, any funds received under this agreement shall be returned to the Department.

#### V. Audits, Monitoring and Reporting

The administration of funds awarded by the Department to the Supervisor may be subject to audits and monitoring by the Department, as described in this section.

1. Each Supervisor expending \$300,000 or more in funds provided under this agreement may be subject to federal single or program specific audits. See OMB Circular No. A-133 (Revised, June 24, 1997) regarding Audits of States, Local Governments, and Nonprofit Organizations and the Catalog of Federal Domestic Assistance (CFDA) § 39.011, Election Reform Payments.

2. Each Supervisor receiving funds under this agreement shall keep such records with respect to the funds received as are consistent with sound accounting principles, including records which fully disclose the amount and disposition by the supervisor, the total cost of the project or undertaking for which such funds are used, the amount of that portion of the cost of the project or undertaking supplied by other sources, and such other records as will facilitate an effective audit. The Supervisor agrees to provide copies of and/or access to all such documentation to state and/or federal auditors and the Department upon request.

3. The Supervisor shall provide a report to the Department on or before December 31, 2005 detailing the actual expenditures by the Supervisor of the funds provided under this agreement which shall cover the period from the date of receipt of the funds by the Supervisor through September 30, 2005. The Supervisor shall subsequently provide such a report by December 31 of each and every year thereafter, covering the preceding period of October 1 through September 30, as long as any funds provided for under this agreement remain and/or are expended.

#### VI. Report Submissions

Reports required by SECTION V of this agreement shall be submitted by the Supervisor directly to the Department of State at the following address:

Department of State  
Division of Elections  
500 S. Bronough Street, Suite 316  
Tallahassee, Florida 32399-0250

#### VII. Record Retention

The Supervisor shall keep all records arising pursuant to this Agreement in accordance with the applicable records retention schedule under law.

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DIVISION OF ELECTIONS

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PAGE 06/09

P.08

Attachment# 1  
Page 3 of 8

## VIII Entirety of the Agreement

All terms and conditions of this agreement are fully set forth in this document and no other material terms of agreement exist outside this document. All terms and conditions of this agreement shall be governed by the laws of the State of Florida regardless of any conflict of laws provisions. In any proceeding or action brought under this section, the parties agree that the prevailing party will be entitled to its reasonable attorney's fees from the other party. The parties agree that proper venue will be in Leon County, Florida.

IN WITNESS THEREOF, the parties have caused this Agreement to be executed by their undersigned officials as duly authorized.

Department of State, Division of Elections:

By: *Dawn Roberts*Dawn Roberts, Director  
Typed name and title*[Signature]*  
Witness*10/13/04*  
Date

Supervisor of Elections:

By: *[Signature]*Ion V. Sancho, Supervisor of Elections  
Typed name and title Leon County*[Signature]*  
WitnessOctober 13, 2004

Date

## 2004 Voting Systems Assistance Grants

Pursuant to 2004-268, Laws of Florida, the Department of State, Division of Elections is authorized to distribute a total of eleven million six hundred thousand dollars (\$11,600,000) among Florida's counties. The purpose of the funding, pursuant to the Specific Appropriation 28711 of that chapter law, is to aid counties in the purchase of accessible voting systems in order to comply with the accessibility requirements of Section 301(a)(3) Title III of the Help America Vote Act which is effective January 1, 2006. In addition to the federal law, Section 101.56062, Florida Statutes, requires accessible voting systems effective July 1, 2005.

Receipt of such funds is conditioned upon submission of the following certificate:

### CERTIFICATE

I ION SAUCHO, Supervisor of Elections for LEON County, do hereby certify that:

- 1) The county has a total of 177 precincts, not including any reporting precincts set up exclusively for absentee ballots, provisional ballots and early voting.
- 2) The county has a total of 125 polling places, used on election day and 1 early voting sites.
- 3) The county currently owns a total of 0 voting systems that meet the disability requirements of Section 301(a)(3) Title III of the Help America Vote Act and section 101.56062, F.S.
- 4) The county's plan for purchasing the direct recording equipment (DRE) or other accessible voting system is on hold. - Vendor not yet determined, waiting on paper AUDIT System or Automark. Plan on purchasing 125-150 machines
- 5) The county anticipates being in compliance with Section 301(a)(3) Title III of the Help America Vote Act on or before 1/1/2006 (date).

  
Supervisor of Elections Signature

8/10/04  
Date

Please return the completed certificate along with the requested materials by August 6, 2004, to:

Florida Department of State, Division of Elections  
Attention: HAVA Section  
500 S. Bronough Street  
Tallahassee, Florida 32399

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VOTING SYSTEMS CERTI

PAGE 02

Attachment # 1  
Page 7 of 8STATE OF FLORIDA  
DEPARTMENT OF STATE  
DIVISION OF ELECTIONSJeb Bush  
GovernorGlenda E. Hood  
Secretary of State

March 17, 2005

The Honorable Ion V. Sancho  
Supervisor of Elections-Leon County  
301 South Monroe Street, Suite 301  
Tallahassee, FL 32301

Dear Mr. Sancho:

Section 101.56062, Florida Statutes requires at least one accessible voter interface device installed in each precinct for all elections conducted after July 1, 2005. During our regional conference calls this week, several counties requested that we provide each county with information on the options available to achieve compliance with the requirement.

Our records reflect that you are currently using the Global Election Systems AccuVote Election System 2001 B (blended) as certified October 30, 2001 on certificate #0110GLOBAL-02.

Your immediate, and probably most cost effective, option is to upgrade your voting system to the Diebold Election Systems, Inc. 2003 B (Blended) + (Plus Audio) system as certified October 14, 2004 on certificate #1004Diebold-02. This upgrade requires the acquisition of an upgrade from GEMS Release 1-17-17 to GEMS Release 1-18-19, acquisition of an AccuVote-TS R6 Touch Screen Ballot Station Version 4.3.15D device for each precinct and sufficient copies of Key Card Tool Version 1.0.1, and Voter Card Encoder Version 1.3.2 to support the use of the touch screen units.

We have enclosed a copy of certificate #1004Diebold-02 for your reference. Please do not hesitate to call me at (850) 245-6220 if you have any questions.

Sincerely,

Paul Craft, Chief, Bureau of Voting Systems  
Certification

Enclosure (1)

Copies: Mr. Cliff Thael Chairman County Commissioners  
Mr. Herbert W.A. Thiele County Attorney

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# Certification

**Diebold Election Systems, Inc.  
DIEBOLD ELECTION SYSTEMS, INC. 2003 B  
(Blended) + (Plus Audio)**

On this date, the Department of State certifies the DIEBOLD ELECTION SYSTEMS, INC. 2003 B (Blended) + (Plus Audio) voting system, submitted by Diebold Election Systems, Inc., for purchase or use by County and Municipal Governments of the State of Florida.

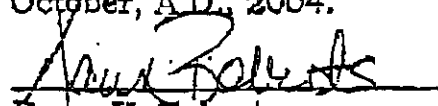
The configuration of this certified voting system consists of Global Election Management System Software (GEMS), Release Level 1-18-19; one or more AccuVote-TS R6 Touch Screen Ballot Station Version 4.3.15D (Windows CE 3.0) devices, one or more AccuVote-OS Optical Scan Tabulators with Hardware Configuration A and/or Hardware Configuration B, Revision 1 used with Firmware 1.94w and VLR firmware 13.9, Key Card Tool Version 1.0.1, Voter Card Encoder Version 1.3.2. The system may be optionally configured with one or more AccuFeed units, Revisions D or E OS (optical scan) Firmware 1.94w.

This certification is granted pursuant to Section 101.015, Florida Statutes, and Rule Chapter 1S-5, Florida Administrative Code

Certification # 1004Diebold-02



Given under my hand and the Great Seal of the State of Florida at Tallahassee, the Capitol, this fourteenth day of October, A.D., 2004.

  
Dawn K. Roberts  
Director  
Division of Elections  
Department of State  
State of Florida